

CENTER FOR DISABILITY ACCESS
Amanda Seabock, Esq., SBN 289900
Prathima Price, Esq., SBN 321378
Dennis Price, Esq., SBN 279082
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

RS Kohli Inc., a California
Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of RS Kohli Inc., a California Corporation and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant RS Kohli Inc. owned Subway located at or about 3586 Homestead Rd, Santa Clara, California, in October 2020.

3. Defendant RS Kohli Inc. owns Subway ("Restaurant") located at or

1 about 3586 Homestead Rd, Santa Clara, California, currently.

2 4. Plaintiff does not know the true names of Defendants, their business
3 capacities, their ownership connection to the property and business, or their
4 relative responsibilities in causing the access violations herein complained of,
5 and alleges a joint venture and common enterprise by all such Defendants.
6 Plaintiff is informed and believes that each of the Defendants herein is
7 responsible in some capacity for the events herein alleged, or is a necessary
8 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
9 the true names, capacities, connections, and responsibilities of the Defendants
10 are ascertained.

11
12 **JURISDICTION & VENUE:**

13 5. The Court has subject matter jurisdiction over the action pursuant to 28
14 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
15 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16 6. Pursuant to supplemental jurisdiction, an attendant and related cause
17 of action, arising from the same nucleus of operative facts and arising out of
18 the same transactions, is also brought under California's Unruh Civil Rights
19 Act, which act expressly incorporates the Americans with Disabilities Act.

20 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
21 founded on the fact that the real property which is the subject of this action is
22 located in this district and that Plaintiff's cause of action arose in this district.

23
24 **FACTUAL ALLEGATIONS:**

25 8. Plaintiff went to the Restaurant in October 2020 with the intention to
26 avail himself of its goods motivated in part to determine if the defendants
27 comply with the disability access laws.

28 9. The Restaurant is a facility open to the public, a place of public

1 accommodation, and a business establishment.

2 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed
3 to provide wheelchair accessible door hardware in conformance with the ADA
4 Standards as it relates to wheelchair users like the plaintiff.

5 11. The Restaurant provides door hardware to its customers but fails to
6 provide wheelchair accessible door hardware.

7 12. A problem that plaintiff encountered is that the entrance door hardware
8 had a pull bar style handle that required tight grasping to operate.

9 13. Plaintiff believes that there are other features of the door hardware that
10 likely fail to comply with the ADA Standards and seeks to have fully compliant
11 door hardware available for wheelchair users.

12 14. On information and belief the defendants currently fail to provide
13 wheelchair accessible door hardware.

14 15. Additionally, on the date of the plaintiff's visit, the defendants failed to
15 provide wheelchair accessible dining surfaces in conformance with the ADA
16 Standards as it relates to wheelchair users like the plaintiff.

17 16. The Restaurant provides dining surfaces to its customers but fails to
18 provide wheelchair accessible dining surfaces.

19 17. One problem that plaintiff encountered is the lack of sufficient knee or
20 toe clearance under the dining surfaces for wheelchair users.

21 18. Plaintiff believes that there are other features of the dining surfaces that
22 likely fail to comply with the ADA Standards and seeks to have fully compliant
23 dining surfaces available for wheelchair users.

24 19. On information and belief the defendants currently fail to provide
25 wheelchair accessible dining surfaces.

26 20. These barriers relate to and impact the plaintiff's disability. Plaintiff
27 personally encountered these barriers.

28 21. As a wheelchair user, the plaintiff benefits from and is entitled to use

1 wheelchair accessible facilities. By failing to provide accessible facilities, the
2 defendants denied the plaintiff full and equal access.

3 22. The failure to provide accessible facilities created difficulty and
4 discomfort for the Plaintiff.

5 23. The defendants have failed to maintain in working and useable
6 conditions those features required to provide ready access to persons with
7 disabilities.

8 24. The barriers identified above are easily removed without much
9 difficulty or expense. They are the types of barriers identified by the
10 Department of Justice as presumably readily achievable to remove and, in fact,
11 these barriers are readily achievable to remove. Moreover, there are numerous
12 alternative accommodations that could be made to provide a greater level of
13 access if complete removal were not achievable.

14 25. Plaintiff will return to the Restaurant to avail himself of its goods and to
15 determine compliance with the disability access laws once it is represented to
16 him that the Restaurant and its facilities are accessible. Plaintiff is currently
17 deterred from doing so because of his knowledge of the existing barriers and
18 his uncertainty about the existence of yet other barriers on the site. If the
19 barriers are not removed, the plaintiff will face unlawful and discriminatory
20 barriers again.

21 26. Given the obvious and blatant nature of the barriers and violations
22 alleged herein, the plaintiff alleges, on information and belief, that there are
23 other violations and barriers on the site that relate to his disability. Plaintiff will
24 amend the complaint, to provide proper notice regarding the scope of this
25 lawsuit, once he conducts a site inspection. However, please be on notice that
26 the plaintiff seeks to have all barriers related to his disability remedied. See
27 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
28 encounters one barrier at a site, he can sue to have all barriers that relate to his

disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

27. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

28. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the

1 altered area, are readily accessible to and usable by individuals
2 with disabilities. 42 U.S.C. § 12183(a)(2).

3 29. When a business provides facilities such as door hardware, it must
4 provide accessible door hardware.

5 30. Here, accessible door hardware has not been provided in conformance
6 with the ADA Standards.

7 31. When a business provides facilities such as dining surfaces, it must
8 provide accessible dining surfaces.

9 32. Here, accessible dining surfaces have not been provided in
10 conformance with the ADA Standards.

11 33. The Safe Harbor provisions of the 2010 Standards are not applicable
12 here because the conditions challenged in this lawsuit do not comply with the
13 1991 Standards.

14 34. A public accommodation must maintain in operable working condition
15 those features of its facilities and equipment that are required to be readily
16 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

17 35. Here, the failure to ensure that the accessible facilities were available
18 and ready to be used by the plaintiff is a violation of the law.

19
20 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
21 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
22 Code § 51-53.)

23 36. Plaintiff repleads and incorporates by reference, as if fully set forth
24 again herein, the allegations contained in all prior paragraphs of this
25 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
26 that persons with disabilities are entitled to full and equal accommodations,
27 advantages, facilities, privileges, or services in all business establishment of
28 every kind whatsoever within the jurisdiction of the State of California. Cal.

1 Civ. Code § 51(b).

2 37. The Unruh Act provides that a violation of the ADA is a violation of the
3 Unruh Act. Cal. Civ. Code, § 51(f).

4 38. Defendants' acts and omissions, as herein alleged, have violated the
5 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
6 rights to full and equal use of the accommodations, advantages, facilities,
7 privileges, or services offered.

8 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
9 discomfort or embarrassment for the plaintiff, the defendants are also each
10 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
11 (c).)

12 40. Although the plaintiff encountered frustration and difficulty by facing
13 discriminatory barriers, even manifesting itself with minor and fleeting
14 physical symptoms, the plaintiff does not value this very modest physical
15 personal injury greater than the amount of the statutory damages.

16
17 **PRAYER:**

18 Wherefore, Plaintiff prays that this Court award damages and provide
19 relief as follows:

20 1. For injunctive relief, compelling Defendants to comply with the
21 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
22 plaintiff is not invoking section 55 of the California Civil Code and is not
23 seeking injunctive relief under the Disabled Persons Act at all.

24 2. Damages under the Unruh Civil Rights Act, which provides for actual
25 damages and a statutory minimum of \$4,000 for each offense.

26 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
27 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.
28

1 Dated: December 8, 2020

CENTER FOR DISABILITY ACCESS

2
3 

4 By: _____

5 Amanda Seabock, Esq.
6 Attorney for plaintiff